

**Department of State
Division of Publications**

312 Rosa L. Parks Avenue, 8th Floor Tennessee Tower
Nashville, TN 37243
Phone: 615-741-2650
Fax: 615-741-5133
Email: sos.information@state.tn.us

For Department of State Use Only

Sequence

Number: 12-24-08

Rule ID(s): 3944

File Date: 12/31/2008

Effective Date: 03/16/2009

Rulemaking Hearing Rule(s) Filing Form

Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing. TCA Section 4-5-205

Agency/Board/Commission:	Commerce and Insurance
Division:	Securities
Contact Person:	Barbara Doak
Address:	500 James Roberston Parkway
Zip:	37243
Phone:	615-741-9467
Email:	Barbara.Doak@state.tn.us

Revision Type (check all that apply):

- ☒ Amendment
☐ New
☐ Repeal

Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables. Please enter only **ONE Rule Number/RuleTitle per row)**

Chapter Number	Chapter Title
0780-04-03	Industry Regulation
Rule Number	Rule Title
0780-04-03-.02	Post Registration

Rulemaking Hearing Rules
of
Department of Commerce and Insurance
Division of Securities

Chapter 0780-04-03
Industry Regulation

Amendments

0780-04-03-.02 Post Registration

0780-04-03-.02(2) Broker-Dealer Reporting Requirements is amended by deleting the entire subparagraph and replacing it with the following:

(2) Broker-Dealer Reporting Requirements

(a) Financial Reports.

1. Upon request by the Division, each registered broker-dealer shall immediately file with the Division a report of its financial condition as of and for each requested fiscal year, including a balance sheet and income statement for such period. Such annual report shall be prepared and filed in accordance with the following requirements:
 - (i) The report shall be certified by an independent certified public accountant or independent public accountant;
 - (ii) The audit shall be made in accordance with generally accepted auditing standards; the examination shall include a review of the accounting system, the internal accounting controls and procedures for the safeguarding of securities and funds, including appropriate tests thereof since the prior examination;
 - (iii) The report shall be accompanied by an opinion of the accountant as to the broker-dealer's financial condition which is unqualified except as to matters which would not have a substantial effect on the financial condition of the broker-dealer. In addition, the accountant shall submit, as a supplementary opinion, any comments, based upon the audit, as to any material inadequacies found to exist in the accounting system, the internal accounting controls and procedures for safeguarding securities, and shall indicate any corrective action taken or proposed;
 - (iv) The annual report shall include as a supporting schedule a computation of net capital as required by rule 0780-4-3-.01(5).
2. In lieu of complying with part (2)(a)1. of this rule, an applicant may file with the Division a copy of the annual financial report required to be filed by Rule 17a-5 promulgated under the 1934 Act. Any such report shall be filed in the form specified in Rule 17a-5, and shall be accompanied by a copy of any comments made by the independent accountant as to material inadequacies in accordance with Rule 17a-5.

(b) Criminal, Civil, Administrative or Self-regulatory actions.

1. Upon request by the Division, each broker-dealer registered in this State shall file with the Division a copy of:
 - (i) Any indictment or information filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, alleging the commission of any felony regardless of

subject matter, or of any misdemeanor involving a security or any aspect of the securities business or any investment-related business.

- (ii) Any complaint filed in any court of competent jurisdiction naming the broker-dealer, any affiliate, partner, officer or director of the broker-dealer, or any person occupying a similar status with or performing similar functions for the broker-dealer, seeking a permanent or temporary injunction enjoining any of such person's conduct or practice involving any aspect of the securities business or any investment-related business; and
- (iii) Any complaint or order filed by a federal or state regulatory agency or self-regulatory organization or the United States Post Office naming the broker-dealer, any affiliate, partner, officer, or director of the broker-dealer, or any person occupying a similar status with or performing a similar function for the broker-dealer, related to the broker-dealer's securities business or investment-related business.

- 2. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any answer, response or reply to any complaint, indictment or information described in subparts (i) through (iii) above.
- 3. Upon request by the Division, each broker-dealer registered in this state shall file with the Division a copy of any decision, order or sanction that is made, entered or imposed with respect to any proceedings described in subparts (i) and (iii) above.
- 4. Nothing in subparagraph (b) is intended to relieve the registrant from any duty the registrant has to comply with legal process or any reporting requirements elsewhere specified in these rules or in the Act.

(c) Transfer, Control or Change of Name.

- 1. Each broker-dealer registered in this state shall file with the Division a notice of transfer of control or change of name not more than thirty (30) days after the date on which the transfer of control or change of name becomes effective.
- 2. Such notice of transfer of control or change of name shall be submitted through the CRD System or directly to the Division, whichever is appropriate.
- 3. Such notice of transfer of control or change of name shall be filed as an amendment to a broker-dealer's existing Form BD or as a complete new Form BD from the successor to a registered broker dealer as provided under T.C.A. § 48-2-110(c).
- 4. Each broker-dealer that files a notice of transfer of control or change of name shall furnish, upon request from the Division, any additional information relating to the transfer of control or

change of name within fifteen (15) days of receipt of such request. Such additional information, if requested, shall be submitted directly to the Division.

- (d) Except as otherwise provided in the Act, or in these rules, all material changes in the information included in a broker-dealer's most recent application for registration shall be set forth in an amendment to Form BD filed promptly with the Division through the CRD System or by a direct filing, whichever is appropriate.
- (e) Every broker-dealer shall file directly with the Division the following reports concerning its net capital, liquid capital and aggregate indebtedness:
 - 1. Immediate telegraphic, facsimile or written notice whenever the net capital or liquid capital of the broker-dealer is less than that which is required by these rules, specifying the respective amounts of its net capital, liquid capital and aggregate indebtedness on the date of notice;
 - 2. A copy of every report or notice required to be filed by the broker-dealer pursuant to Rule 17a-11 promulgated under the 1934 Act, contemporaneously with the date of filing with the SEC.
- (f) Each broker-dealer shall give immediate telegraphic, facsimile or written notice to the Division of the theft or mysterious disappearance from any office in this state of any securities or funds which might affect the financial stability of the broker-dealer, stating all material facts known to it concerning the theft or disappearance.

Authority: T.C.A. §§ 48-2-102, 48-2-107, 48-2-109, 48-2-110, 48-2-111, 48-2-111(a), 48-2-112(a)(2)(B), 48-2-112(a)(2)(G), 48-2-113, 48-2-115(f), 48-2-116(a), and 48-2-118.

Public Hearing Comments

One copy of a document containing responses to comments made at the public hearing must accompany the filing pursuant to T.C.A. §4-5-222. Agencies shall include only their responses to public hearing comments, which can be summarized. No letters of inquiry from parties questioning the rule will be accepted. When no comments are received at the public hearing, the agency need only draft a memorandum stating such and include it with the Rulemaking Hearing Rule filing. Minutes of the meeting will not be accepted. Transcripts are not acceptable.

Please see attached memorandum.

Regulatory Flexibility Addendum

Pursuant to Public Chapter 464 of the 105th General Assembly, prior to initiating the rule making process as described in § 4-5-202(a)(3) and § 4-5-202(a), all agencies shall conduct a review of whether a proposed rule or rule affects small businesses.

Addendum

Regulatory Flexibility Act Analysis of Impact on Small Businesses

The Department of Commerce and Insurance has considered whether the proposed amendments in this notice of rule making hearing are such that they will have an economic impact on small businesses (businesses with fifty (50) or fewer employees). The proposed amendments are not anticipated to have a significant economic impact affecting small businesses. The proposed amendments intend to repeal the requirement for broker-dealers registered with the Securities and Exchange Commission to file annual audited financial statements with the Tennessee Securities Division because such annual filings are redundant. The proposed amendments will allow the Securities Division to retain the right to request the annual filings at any time should it be deemed necessary. The amendments also remove typographical errors and sentence redundancies.

The outcome of the analysis set forth in Tenn. Code Ann. § 4-5-403 is as follows:

- (1) The proposed amendments apply to broker-dealers registered with the Securities and Exchange Commission who are required to file annual audited financial statements with the Securities and Exchange Commission. The proposed amendment will not create any additional costs to the broker-dealers and will in fact save them the costs associated with the annual filing of the audited financial statements.
- (2) There will be a minimal reduction in the administrative costs to the broker-dealers since the amendments eliminate the duplicative filing of annual audited financial statements with the Tennessee Securities Division.
- (3) Registrants will no longer be required to submit duplicate annual audited financial statements to the Tennessee Securities Division. Small businesses will not be adversely affected by these amendments. To the contrary, these amendments reduce the regulatory burden on small businesses. Consumers will not be adversely affected because the broker-dealers are still required to file annual audited financial statements with the Securities and Exchange Commission and the Tennessee Securities Division has immediate access to the SEC filings.
- (4) The amendments are the least burdensome means of meeting the objectives of the Tennessee General Assembly.
- (5) These amendments acknowledge the existence of federal rules requiring the filing of annual audited financial statements by SEC registered broker-dealers and seeks to eliminate the duplicative state filings of the same documents.
- (6) Small businesses can not be exempted from these rules. The proposed amendments are cost effective for large and small businesses.